

REPUBLICAN RIVER COMPACT ARBITRATION
BEFORE MR. KARL DREHER, ARBITRATOR

Republican River Compact)
)
Arbitration)
)

Deposition of MARV SWANDA, taken pursuant to
notice at 1:31 p.m. on April 7, 2009, at the offices of
the United States Bureau of Reclamation, 203 West Second
Street, Grand Island, Nebraska.

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- - -

ALSO PRESENT: BRIAN DUNNIGAN, Director, Nebraska
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OTHERS PRESENT BY TELEPHONE: DALE BOOK, PE, Consultant
for Kansas, Spronk Water Engineers

- - -

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iii

I N D E X

<u>WITNESS:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Marv Swanda	1	58	--
	- - -		

<u>EXHIBITS:</u>	<u>Marked</u>	<u>Offered</u>	<u>Found</u>
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Exhibits 1-10 marked in a
prior deposition

11	Letter date-stamped 3-4-09 to John Draper from Michael Ryan (3 pages)	2	--	Appendix
12	Research Proposal and Performance Contract Management System (2 pages)	32	--	Appendix
13	Letter on Accounting of Purchased Water on Republican River dated 6-21-07 (8 pages)	42	--	Appendix
14	Correspondence to Marv Swanda from Brad Edgerton dated 6-21-07 (3 pages)	43	--	Appendix
15	Correspondence to Marv Swanda from William Peck dated 8-10-07 (1 page)	43	--	Appendix

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iv

<u>EXHIBITS (CONT'D)</u>	<u>Marked</u>	<u>Offered</u>	<u>Found</u>
16 Republican River Reclamation Strategy from Gordon Aycock to Gary Campbell and Donald Moomaw dated 6-2-06 (3 pages)	47	--	Appendix
- - -			
Appearances			i
Stipulations			vi
Reporter's Certificate			vii
Certificate of Witness			59
- - -			

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v

STIPULATION:

It is stipulated and agreed by and between counsel for the parties in this action that all statutory requirements as to certificate, mode of transmission, notice, notice of filing and the presence of the witness during the extension of the testimony are hereby expressly waived.

It is further stipulated that all objections as to form, foundation and responsiveness shall be made at this time or otherwise deemed waived; all other objections will be reserved until time of trial.

- - -

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REPORTERS CERTIFICATE:

State of Nebraska)
) ss.
Lancaster County)

I, KELLY S. HORSLEY, certified reporter and a Notary Public duly commissioned, qualified and acting under a general notarial commission within and for the State of Nebraska, certify that MARV SWANDA, appeared before me and was first sworn to testify the truth, the whole truth and nothing but the truth; that this deposition was reported by me and taken pursuant to the stipulation and hereinbefore set forth; that I am not counsel, attorney or relative of any of the parties or otherwise interested in the event of this suit; and that the following pages reflect truly, accurately and completely the recording of this proceeding.

IN TESTIMONY WHEREOF, I have hereunto set my hand officially and attached my notarial seal at Lincoln, Nebraska, this _____ day of April, 2009.

Notary Public

- - -

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Marv Swanda -- direct

1

1 PROCEEDINGS:

2 THE REPORTER: Raise your right hand and I'll
3 swear you in. Do you swear the testimony you're about to
4 give today will be the truth, the whole truth, and
5 nothing but the truth, so help you God?

6 MR. SWANDA: I do.

7 MARVIN SWANDA

8 _____ Called as a witness on behalf of the State of
9 Nebraska, having first been duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. WILMOTH:

13 Q Good afternoon, Mr. Swanda. May I call you Mr.
14 Swanda, or is there a doctor in there or anything that I
15 need to know about?

16 A No.

17 Q All right, very good. Thank you for coming
18 this afternoon. We appreciate your attendance.

19 And, again, Mr. Chaffin, I thank you for making
20 Mr. Swanda available to us.

21 Before we get too far down the line, did I
22 assume for the sake of this deposition that the
23 authorization is essentially concurrent with that
24 authorization that was held by Mr. Thompson with regard
25 to what we can address, and what cannot be addressed?

Marv Swanda -- direct

2

1 MR. CHAFFIN: Mr. Swanda is not really in the
2 line of management, and so some of the policy things that
3 you were asking, Mr. Swanda is not aware of those. So
4 he's more into the technical. And I think that it's
5 spelled out a little bit in the one paragraph in the
6 authorization, so that would be the only thing that we
7 would let you know.

8 MR. WILMOTH: Is that authorization part of the
9 record yet?

10 MR. AMPE: No.

11 MR. WILMOTH: Do you have a copy of that handy?
12 This is Ryan's letter?

13 MR. CHAFFIN: Yes.

14 MR. WILMOTH: I just wanted to include it in
15 the record.

16 (Exhibit No. 11 was marked for identification.
17 See Index.)

18 Q (By Mr. Wilmoth) For the sake of
19 authentication, do you recognize this document, Mr.
20 Swanda?

21 A Yes, I do.

22 Q And does that address the scope of issues to
23 which you are able to speak today?

24 A Yes, it does.

25 Q Okay, thank you. And this was issued by whom?

Marv Swanda -- direct

3

1 A I believe it's Mike Ryan, Regional Director.

2 Q Mr. Swanda, what's your personal and
3 professional background, generally?

4 A Okay. My background, I am a agriculture
5 engineer from South Dakota State University.

6 Q When was that received?

7 A That was in 1973. And I worked with the South
8 Dakota Department of Natural Resources, '75 to 1980; and
9 in 1980 I transferred to the Bureau of Reclamation in
10 Huron, South Dakota. I was in a planning group that
11 included hydrology on different projects. And in '91, or
12 excuse me, 1981, July, I transferred to the McCook field
13 office, which is under the, now, Nebraska-Kansas area
14 office in McCook; transferred down there as a hydraulic
15 engineer working in the operations branch it was called
16 at that time. I was in that capacity until 1985 I
17 believe it was, when I was appointed the Chief of
18 Facilities Maintenance in the same office.

19 I was in that capacity until 1995 when I was
20 reassigned as the Water Operations Chief, back to the
21 same group that I was in when I initially came there, I
22 became the chief of that group; '95 until, I think 2001
23 when I was appointed the McCook Field Office Manager over
24 all of those said activities that I had worked in prior
25 to that, and I remain in that position today.

Marv Swanda -- direct

4

1 Q So you are currently the McCook Field Office
2 Manager?

3 A Yes.

4 Q Backing you up just briefly, with regard to
5 your work at the South Dakota Natural Resources
6 Department, what was the nature of that work?

7 A I was in the environmental section of that
8 group.

9 Q And what did those tasks typically entail?

10 A Mostly dealt with waste water treatment plants,
11 those kinds of things and --

12 Q Permitting?

13 A Yes. And also there was a -- it was called a
14 208 Project, I think, non-point runoff-type of
15 activities.

16 Q Water quality management issues, generally?

17 A Yes, yes.

18 Q As they related to waste water treatment
19 plants?

20 A Yes.

21 Q And when you were in the planning division at
22 the Bureau in Huron, I believe you mentioned that you
23 were involved in some hydrology planning?

24 A Yeah. It was --

25 Q What did that involve?

Marv Swanda -- direct

5

1 A We had several groups, and then there was, oh,
2 whatever you call it, probably five or six planning
3 studies going, and so we provided the -- I was
4 responsible for the hydrology related to those studies.

5 Q Are these water supply projects that were being
6 planned?

7 A Typically they were irrigation projects, that
8 kind of thing.

9 Q Are these -- Were they new projects, or were
10 they expansions to existing facilities?

11 A No, they were projects that were being planned.

12 Q So they were new projects?

13 A Yes.

14 Q Did any of those come to fruition?

15 A I believe there was a couple of those that did.
16 There was a transfer of the functions from that office at
17 that time, to the regional office in Billings, and I
18 think the studies continued up there.

19 Q And then you transferred to the McCook field
20 office as a Hydraulic Engineer; is that right?

21 A Hydraulic Engineer, right.

22 Q And in that capacity, generally, what were your
23 obligations?

24 A The main operations was the branch was set up
25 with a supervisor and several -- two engineers as

Marv Swanda -- direct

6

1 operators that we were involved in the operations of all
2 of our projects throughout the Nebraska-Kansas area, and
3 we had the responsibility, the direct operations on 11 of
4 the projects, which all of those in the Republican River
5 Basin were in that bunch.

6 Q And did that deal principally with surface
7 water hydrology or groundwater hydrology?

8 A No, it was strictly surface water dealing with
9 the reservoirs in our irrigation districts and contracts.

10 Q Do you have any background or degrees or
11 expertise you have collected over the years in
12 groundwater modeling?

13 A Not that I could really mention, I don't
14 believe. Pretty much on the periphery of that kind of
15 activity.

16 THE REPORTER: Pretty much what?

17 THE WITNESS: On the periphery.

18 THE REPORTER: Thank you.

19 Q (By Mr. Wilmoth) And I believe you said in
20 1985 you were reassigned to be in charge of water
21 operations?

22 A Yeah, it was the original group that I reported
23 to McCook in, I became the supervisor in that group,
24 which was the Water Operations Chief.

25 Q And was that essentially in charge of turning

Marv Swanda -- direct

7

1 dials, for lack of a better word; figuring out how much
2 water came down the system; how much was retained; how
3 obligations were met?

4 A Yeah, it was strictly water operations related
5 to all of the Nebraska-Kansas area projects. There was
6 15 dams and reservoirs.

7 Q So that would include the -- I'm sorry, strike
8 that. Were you here for the earlier testimony of Mr.
9 Thompson?

10 A Yes.

11 Q Would that include the facilities that Mr.
12 Thompson talked about, generally, in the Basin?

13 A Yes, I believe so.

14 Q Okay. Can you tell me a little bit about those
15 facilities. Pensively, what I am interested in learning
16 from you is your view about how those facilities need to
17 be operated, either as a unit or individually to meet the
18 project purposes.

19 A Okay. In the -- my time there and experience
20 related to those projects, there have been times we have
21 gone back and reviewed the Definite Plan Reports, DPRs
22 that were referenced earlier as to how the projects were
23 all laid out. And back in the '40s and the '50s when
24 these plans were put together, the intent was that
25 basically there would be a sharing of water throughout

Marv Swanda -- direct

8

1 the Basin, but as to --

2 Q You mean among the projects?

3 A Yeah, the original theory was that is that
4 there could be. But as it evolved, the intent -- and
5 there's language in the DPRs that speaks to a particular
6 reservoir being related to a particular irrigation
7 district project. That was ultimately what was
8 envisioned, I believe, that we weren't going to be
9 transferring water from one reservoir to another. For
10 example, each one somewhat stood alone to support the
11 project that was associated with it.

12 Q Is that true with regard to all projects, or
13 are there individual projects where that decision has
14 been made?

15 A No, I think that's how they've been operated
16 throughout the history that I am aware of.

17 Q All the projects are individually operated to
18 serve one customer --

19 A One or two districts depending on which ones
20 are associated with those reservoirs.

21 Q So let's just walk down the system, and if you
22 could briefly identify which facility serves which
23 district?

24 A Okay. And did you want me to address Bonny in
25 Colorado?

Marv Swanda -- direct

9

1 Q Yes, I would like that, please.

2 A Okay. I will kind of do the same as Aaron did
3 earlier, move from the west to the east.

4 Q Would you care to refer to this, or you
5 probably already have it in the back of your mind.

6 A I think I probably know it. Bonny Reservoir,
7 northeastern Colorado, first, as Aaron indicated, they're
8 all multipurpose reservoirs in the Republican River
9 Basin. They all have probably an irrigation function
10 associated with them originally, for sure, and they all
11 have flood control pools.

12 Q Now, were those the two original authorizations
13 or were they always multi-use?

14 A They were always -- That was their authorized
15 purpose.

16 Q Under the '44 Act?

17 A Yes. And Bonny, specifically, it was
18 envisioned there would be a small irrigation district
19 associated with it. That never came to be.

20 Q Why is that?

21 A I think there was just never support -- from
22 what I understand there was never support gathered out in
23 that area to go ahead and -- you know, it's quite a
24 process for a group or people to get a district put
25 together; an interest in it, and I don't think ever -- it

Marv Swanda -- direct

10

1 never came to pass out there.

2 Q No local, political support, you mean, for that
3 project?

4 A Right, yes.

5 Q Was there sufficient water supply to justify a
6 project, in your view?

7 A I believe there probably was, initially. It
8 would have been, I would say, assuming the district was
9 not, you know, over -- too large or that kind of thing,
10 it would have supported an irrigation function. Not a
11 large district, certainly.

12 Q Assuming that there were local support today,
13 is there any reason why that district could not be formed
14 and served?

15 A There would -- In my view, there would be no --
16 There's no water supply to support --

17 Q To what do you attribute that?

18 A I attribute that to the inflows and reservoir
19 levels that we have documented and observed over the last
20 20 years, 30 years.

21 Q And do you believe that those inflows are
22 the -- those declining inflows are the result of some
23 activity in Colorado?

24 A I do.

25 Q What activity is that?

Marv Swanda -- direct

11

1 A I think to a large extent they're related to
2 groundwater development.

3 Q Anything else?

4 A There could be some depletions related
5 potentially to conservation activities; to what extent,
6 that I don't know, but --

7 Q Okay. So that facility principally serves what
8 purpose if there is no irrigation function?

9 A What happened -- What transpired out there, is,
10 I believe in 1982 the State of Colorado expressed an
11 interest of purchasing the conservation space in the
12 reservoir solely for the purpose of recreation, fish and
13 wildlife activities out there. And so really the demand,
14 for the most part, from any irrigation function went away
15 at that time.

16 Q Do you know what was paid for that?

17 A I think --

18 Q How much money, I mean?

19 A Yeah, I think what they -- I believe, if I
20 remember correctly is that they paid off the capital --
21 the debt related to the water supply, and I believe it
22 was in the neighborhood of three million dollars,
23 something near that.

24 Q But the Bureau still holds title to those
25 facilities; is that right?

Marv Swanda -- direct

12

1 A Yes, that's correct.

2 Q And do you make releases at the direction of
3 the State of Colorado then?

4 A Yes, we do.

5 Q And was this same situation replicated
6 elsewhere in the Basin? At Norton Reservoir, for
7 example?

8 A What -- Down at Norton there is a -- as I
9 recall it's a short-term lease of some storage space in
10 there by the State of Kansas. It's not a long-term
11 contractual relationship.

12 Q Do you know how long the duration of that lease
13 is for?

14 A I'm -- I think it's somewhere in the five-to-
15 ten year range. I don't remember exactly. I think it
16 might be ten years, but --

17 Q Is that also for recreation and wildlife,
18 principally?

19 A That's their purpose. Now there is still some
20 irrigation allowed out of their reservoir levels, reach
21 certain levels in there. That's in their agreement with
22 the State, the District -- between the State and the
23 District.

24 Q And was there a payment made for that lease?

25 A There was to the irrigation district.

Marv Swanda -- direct

13

1 Q And did the Bureau receive any enumeration for
2 that?

3 A Not to my knowledge.

4 Q How did that affect the repayment structure of
5 that project?

6 A I don't think it had a -- The only affect it
7 would have would -- to assist the district in paying
8 their outstanding bills and that kind of thing.

9 Q Okay. So the district received money and then
10 they turned around and paid that to the Bureau for O&M?

11 A Yeah, we would have a -- we would collect, as
12 we do with all of them if we have a contract. We would
13 collect a share of the operation and maintenance expenses
14 related to those facilities.

15 Q How often during the term of this lease has
16 irrigation occurred at that facility?

17 A I believe -- without looking and digging
18 through my records here, but I believe there was some
19 water released last year, and I don't recall the year
20 before.

21 Q For irrigation purposes?

22 A Yes. It was a very minor amount. The district
23 typically, they are very frugal with their supply there.

24 Q Do they also have groundwater supplies
25 available to them?

Marv Swanda -- direct

14

1 A I believe they do.

2 Q Has groundwater pumping in that area impacted
3 the project at all?

4 A Above the reservoir?

5 Q Above the reservoir.

6 A It may have to some extent, but it's typically
7 that drainage basin is fairly narrow, so there's -- from
8 a hydrologic standpoint it's not wide where it collects
9 up a lot of runoff so there -- it's been somewhat limited
10 from the initial construction of the dam. But there are
11 probably ground water effects, and I really can't speak
12 to what those might be, but --

13 Q Have you witnessed declining inflows into that
14 facility?

15 A Yes, we have. It hasn't been as pronounced as
16 other facilities.

17 Q Would it be fair to assume that the decline in
18 those inflows would be attributable potentially to
19 groundwater pumping and conservation practices the same
20 as with Bonny?

21 A I believe that would be a true statement.

22 Q I'm sorry I interrupted you, but I'd like, if
23 you would to continue, please, down the system?

24 A Okay. I'll move straight down from Bonny to
25 Swanson Lake, Trenton Dam. That's on the -- I guess I

Marv Swanda -- direct

15

1 failed to mention Bonny's on the South Fork of the
2 Republican. Swanson is on the main stem of the
3 Republican River. Out of Swanson, we supply irrigation
4 water to the Frenchman Cambridge Irrigation District.
5 They have three reservoirs that they use for their canal
6 systems. There is a canal directly off of the dam, off
7 Trenton Dam, Meeker-Driftwood Canal that we supply water
8 too.

9 And then we also -- historically, we released
10 water to the river from the dam, that is ultimately
11 picked up at one of the diversion dams located
12 downstream; either Bartley Diversion Dam or Cambridge
13 Diversion Dam, which are both Frenchman Cambridge
14 Irrigation District supply points.

15 Q And about how much ground is irrigated in
16 Frenchman Cambridge?

17 A I think they have a total acreage of, I'm going
18 to say 45,000, I believe is the number. And they have --
19 Water is delivered to them through four different canal
20 systems.

21 Q And you've witnessed a decline to inflows to
22 that project also?

23 A Yes, it's been rather significant. I would
24 point to, and I don't know what page it is in the -- some
25 of the information we've provided, but we've outlined in

Marv Swanda -- direct

16

1 there on all of our reservoirs the DPR averages; what was
2 envisioned and then we've done a comparison of the
3 inflows to those particular reservoirs. And as of the
4 last period, we would -- we're looking at 28 percent of
5 what was envisioned, originally.

6 Q And you attribute that again to groundwater
7 pumping? Now is that -- Am I correct about that?

8 A Yes.

9 Q And do you attribute that to groundwater
10 pumping in Nebraska or groundwater pumping in Nebraska
11 and Colorado, or groundwater pumping in Nebraska,
12 Colorado and Kansas, or some combination thereof?

13 A It's probably a combination thereof.

14 Q Okay, and if you could proceed to the next
15 facility.

16 A Okay. Over to the Frenchman Creek is Enders
17 Reservoir. That supplies water to two irrigation
18 districts that -- they are Princeton Valley Irrigation
19 District and the H&RW Irrigation District, the diversion
20 point for both of those districts at the same diversion
21 dam at Palisade, Nebraska, which is approximately 50 to
22 60 miles downstream of the dam, so we would make releases
23 -- storage releases from the dam to supplement the
24 natural flows down at that point.

25 And probably Enders is one that we've noticed

Marv Swanda -- direct

17

1 the most significant decline in inflows.

2 Q And to what do you attribute that decline?

3 A I think, to a large extent, it's the
4 groundwater development above Enders.

5 Q Again, I assume this is some combination of
6 pumping in the three states?

7 A Yes, I would -- Well, in this case, it would be
8 Nebraska and Colorado.

9 Q Were you here earlier when Mr. Thompson talked
10 about the water supply -- I'm sorry -- pardon me, the
11 water service contract for H&RW?

12 A Yes, I was.

13 Q And if that's a water service contract, does
14 that mean that H&RW is not technically a Reclamation
15 project?

16 A I don't think that's what that means. It means
17 that contract -- it was redone in the early '80s.
18 There's references in the contract about the
19 significantly declining inflows in their water supply,
20 and so the contract was changed to a water supply
21 contract. And what that means, it's -- their payments --
22 it's based on available water knowing the water supply
23 was declining.

24 Q Now you say it was changed, does that mean it
25 was changed from the standard Reclamation repayment

Marv Swanda -- direct

18

1 contract?

2 A I believe that's correct.

3 Q Under the 1902 Act?

4 A Yes, I believe that's correct. And when that
5 was changed, I believe their capital debt was relieved.

6 Q So there's no outstanding debt attributable to
7 any infrastructure within H&RW?

8 A I think that's correct. There could be --
9 there's a possibility there could be some on their
10 distribution works. I'm not totally familiar with that
11 for sure, but - -

12 Q And by debt, I should have clarified, I meant
13 federal debt.

14 A Yes.

15 Q And if water is not available to H&RW, does
16 H&RW have any recourse as against the Bureau?

17 A No, not that -- Now there's probably clauses in
18 the contract that we indicate that we are not responsible
19 for water shortage, that kind of thing.

20 Q And those clauses actually are embedded in the
21 standard Reclamation retainment contracts too; are they
22 not?

23 A I believe that's correct. And in the case of
24 H&RW, that would be how the contract is set up is that
25 unless there is six inches of water available to the

Marv Swanda -- direct

19

1 farm, they don't pay the United States the O&M for that
2 particular year.

3 Q I see.

4 A So in most years we do not receive a payment
5 from them.

6 Q And do you recall how frequently between the
7 time of construction, and say, 2000, water was delivered
8 and paid for to H&RW?

9 A I believe -- I'm thinking they received water
10 possibly one time.

11 Q One time since the construction of the
12 facility?

13 A No, since -- didn't you say 2000?

14 Q I'm sorry. My question was between the
15 construction of the facility and 2000, approximately how
16 many times have they received water? And I don't expect
17 you to have that at your fingertips necessarily, if
18 you've got a ballpark idea; 50 percent of the time, 75
19 percent?

20 A Okay, I'd say prior to 2000 they probably
21 received water 75 percent of the time, at least.

22 Q There would be a Bureau record somewhere that
23 would reflect the actual number there, I assume?

24 A Yes, it's actually -- I think it's in --

25 Q In the materials?

Marv Swanda -- direct

20

1 A Yes.

2 Q Are those materials that were provided to us?

3 A Yes, I believe they are in one of the other
4 records, I believe it's question one, or whatever.

5 Q So let's continue down the system then, please.

6 A Okay. And one thing I might just reference on
7 those two districts, the Frenchman Valley has an 1890
8 right, and H&RWs much a junior, so their natural flow
9 doesn't help them out much anymore.

10 Q And these priority dates are priorities
11 afforded them under state law?

12 A Yes, that's correct.

13 Proceeding down the line, Red Willow Dam, Hugh
14 Butler Lake are located on Red Willow Creek north of
15 McCook there; supplies water also to the Frenchman
16 Cambridge Irrigation District. Located just downstream
17 of that facility is Red Willow Diversion Dam; supplies
18 water to the Red Willow Canal, something in the
19 neighborhood of 5,000 acres, something like that. And it
20 also supplies water to the Bartley Diversion Dam which is
21 located on the main stem of the Republican River. So
22 there's two places water can be brought to the Bartley
23 Diversion Dam is from Swanson Lake, or Hugh Butler Lake.

24 Proceeding on down the Basin, Harry Strunk
25 Lake, located north of Cambridge. That is the third

Marv Swanda -- direct

21

1 reservoir that supplies water to the Frenchman Cambridge
2 Irrigation District. That is a reservoir that is one of
3 the few -- actually the one that almost fills every year
4 out of all of these we will be talking about. Its got a
5 good supply of inflow, and I think its enhanced by the
6 some of the imported water comes into that facility now.

7 Q Is this what people sometimes in Nebraska refer
8 to as the groundwater mound?

9 A Yes, I believe that's correct. And so there's
10 a good water supply in Harry Strunk that we can supply
11 one to a canal for Frenchman Cambridge Irrigation
12 District. That's the Cambridge Canal located just east
13 of Cambridge, Nebraska.

14 And moving downstream is Harlan County Lake,
15 which is the Corp of Engineers facility. United States
16 holds the entire water right in that facility, the Bureau
17 of Reclamation does. We are responsible for the
18 irrigation function of that quota facility. There's, I
19 think, 150,000 acre-feet of storage in there for
20 irrigation purpose. We supply two irrigation districts'
21 water out of that facility; it's Nebraska Bostwick
22 Irrigation District and then the Kansas Bostwick
23 Irrigation District, located in Kansas. So that facility
24 we work collaboratively with the Corp of Engineers. We
25 split the water supply in there, make a determination as

Marv Swanda -- direct

22

1 to which district -- how much of that water supply
2 belongs to each district in any given year.

3 Q And how is that determination made?

4 A What we do is we have what's called a consensus
5 plan with the Corp of Engineers and the Bureau of
6 Reclamation, and that plan is contained -- I think it's
7 an attachment to the FSS. What that document does, it
8 describes exactly the procedure that we use on an annual
9 basis working with the Corp on how we determine how much
10 irrigation supply is available. And we do an estimate in
11 January to give the districts an idea what they could be
12 expecting when the season rolls around, and then we firm
13 that supply up as best as we can at the end of May.

14 Q So the -- you provide the districts a
15 projection in January; is that what you said?

16 A Yes. And we indicate to them how much water
17 they -- it's kind of a minimum conservative approach kind
18 of a thing. It gives them an idea going in. You know,
19 it certainly can change depending on how the spring turns
20 out, but --

21 Q And so that's your first projection?

22 A Yes.

23 Q And the second projection is provided in what
24 year, I mean what month?

25 A Okay. We do this in January, and then we --

Marv Swanda -- direct

23

1 when the end of May rolls around, we see where we're at,
2 and then we adjust that up. If it ends up the end of May
3 and the water supply is actually less than we predicted,
4 we have a procedure where we can proceed below the
5 irrigation pool in Harlan County to make sure we get at
6 least the amount we told them was available.

7 Now it is limited by a reservoir elevation. If
8 it gets down so low, we can only go down, we can't -- we
9 can only go down to 1927.

10 Q So when you say proceed below irrigation pool,
11 you mean below what's the standard pool?

12 A Right. There's a sediment pool located below,
13 and so we have agreed with the Corp that when we miss our
14 projection, it turns out to be less than we thought, we
15 can drop down into that sediment pool and make up the
16 difference.

17 Q And how often does that happen?

18 A I think it happened -- I don't know how many
19 times, but it has happened in the early 2000s, I believe.
20 And that was when our -- we used a projected inflow, and
21 that was when our inflows were significantly less than
22 what we were using for an estimate. So that --

23 Q And why did -- Why were the inflows
24 significantly less?

25 A I think it's partly -- it's to a large extent

Marv Swanda -- direct

24

1 related to the declining water supply upstream. There
2 were certainly dry conditions. Certainly 2002 was a very
3 bad year from just a precipitation-type year. So I think
4 it's a combination of both. And as projects upstream,
5 we're not operating because of the same reason we weren't
6 seeing the return flows, those kind of things coming
7 upstream.

8 Q And those upstream projects are not used to
9 provide any flow support obviously for these lower
10 projects; is that?

11 A That's correct. The benefit from operating the
12 projects upstream is the return flows that you see from
13 those projects and that was --

14 Q From the application of irrigation water?

15 A That's correct. And I would certainly
16 anticipate it in the DPRs, that that would occur.

17 Q How much return flow, generally, was
18 anticipated in the system?

19 A I don't know if I can give you a number. There
20 was certainly a reference to it in our DPR documents, and
21 it's somewhat dependent on which project you may be
22 talking about. But I think one of the numbers was used,
23 was 75 percent of the difference between the canal
24 diversions and the farm deliveries. And I believe some
25 of that was used in the accounting procedures in the

Marv Swanda -- direct

25

1 Compact.

2 Q And I infer from your comments that these
3 return flows, estimates, are not panning out?

4 A No. As you have projects upstream that don't
5 operate because of short water supplies, then the return
6 flows from those projects are not there to enhance the
7 stream flow as it moves downstream, so --

8 Q Let's continue on down the system.

9 A Okay. In conjunction with Harlan County, we
10 have another reservoir that we operate, I don't know if
11 you call it in tandem but it's in -- it's also another
12 source of supply for the Kansas Bostwick Irrigation
13 District, so we operate -- the Bostwick division includes
14 both of the Bostwick Districts, Kansas and Nebraska.

15 So the Bostwick Division water supply we look
16 at; Harlan County; we look at Lovewell the other
17 reservoir in Kansas, the supply that's in there; we look
18 at the stream flows in the Republican, above and below
19 Harlan County. We look at the stream flow in Prairie
20 Dog, which Lovewell Reservoir is located on, so using all
21 those variables, we -- that's all cranked in to determine
22 the available water supply for both districts. And the
23 theory is that out of all those acres, both districts, we
24 will share that supply as equal as we can, supplying the
25 same amount to each acre.

Marv Swanda -- direct

26

1 Q And you're talking about the supply that's
2 available in Harlan and Lovewell?

3 A Yes. And the more water we have in Lovewell
4 shifts some of the supply in Harlan to the Nebraska
5 District. But in Lovewell, you can only serve so many at
6 acres that are located above Lovewell, and there's
7 probably around 19,000 acres above Lovewell that are
8 relying on flows from the Republican or Harlan County.

9 Q 19,000 acres above Lovewell; is that what you
10 said, I'm sorry?

11 A Yes, I think that's roughly the number.

12 Q Thank you. And I'm interested in the movement
13 of water between Harlan County and Lovewell. When does
14 that occur?

15 A What we'll do -- and it all depends on any
16 given year what the conditions are, but what we'll do if
17 it's a dry situation, we will attempt to fill, refill --
18 our goal is to use as much as the storage as we can in
19 Lovewell, you know, given the irrigation season.

20 Q When you say use, do you mean draw down?

21 A Yes, draw all the storage that's available for
22 irrigation. And what that does is it preserves some of
23 the supply in Harlan County. One of the theories is to
24 keep as much water upstream as you possibly can, you
25 know, don't move it down until you absolutely need it.

Marv Swanda -- direct

27

1 So on the off-season, if it's a dry period, and there
2 were in the 2000s, we ran -- we can divert water out of
3 the Republican through the Courtland Canal into Lovewell
4 to refill it in the off-season.

5 Q In the off-season?

6 A Yeah.

7 Q So this is outside the irrigation season?

8 A Yes.

9 Q Okay.

10 A And we certainly do that so the more water we
11 can get into Lovewell, the less we need from Harlan
12 County to go down there. We want to supply all --

13 Q In the next irrigation season, for example?

14 A Right, yes. But when we need to -- you cannot
15 supply all of the acres, a full supply just from the
16 storage of Lovewell. So on a typical year --

17 Q Excuse me, when you say all of the acres, do
18 you mean all of the acres in KBID?

19 A No.

20 Q Or all of the acres below Lovewell?

21 A All of the acres below Lovewell.

22 Q Thank you.

23 A If you have just Lovewell storage, that will
24 not -- that will supply somewhere in the neighborhood of
25 six inches of water. So in a normal operation season, we

Marv Swanda -- direct

28

1 will bring water through Lovewell on downstream in order
2 to equalize all of the acres to get -- say if you have a
3 nine-inch supply we're shooting for, you have to bring
4 three more inches of water equivalent to that amount
5 through Lovewell Reservoir from Harlan County, or from
6 natural flows in the Republican River. And our attempt
7 as always, is to equalize the deliveries as best as we
8 can.

9 Q And do you have a sense since 2000, how often
10 you have run water to Harlan County to Lovewell during
11 the non-irrigation season?

12 A I believe we probably have done that in all the
13 years except for the last two, I'm thinking, two-to-
14 three, probably.

15 Q So roughly from 2000 to 2006?

16 A Yeah, that would be my -- Yes. It's kind of a
17 different -- We hadn't really done the winter-type
18 operation for -- I wouldn't say we never have done that
19 over the years, but I think recently is the first time
20 we have done that to replenish Lovewell in the winter
21 time. Typically we would be able to do that in the
22 spring, but due to low flows, we've resorted to running
23 through the winter.

24 Q Okay. And just to be clear, I think I
25 understand the answer, but, there are no other facilities

Marv Swanda -- direct

29

1 on the system that are operated in this same manner?

2 Essentially, in tandem to support one another?

3 A No. Right, yeah, that's correct, other than
4 Frenchman Cambridge has three reservoirs that you can
5 supply water for more than one of the reservoirs.

6 Q And that's done?

7 A It is done depending on how much water we've
8 got in any of the two upstream reservoirs.

9 Q And earlier on you mentioned that, at some
10 point, the original idea was to run these reservoirs as a
11 unit?

12 A Yes.

13 Q But that changed. I'm trying to understand,
14 did that change between what Congress envisioned in the
15 '40s and what the DPR said later, or was it after the
16 DPRs were written, or --

17 A I don't think it changed. Did you get that --

18 Q I'm sorry. I thought that you said earlier
19 that the original idea was --

20 A The original idea was -- when they started out
21 very early on was that there would be a need to share the
22 water supply throughout the basin, and I think once the
23 projects were set up, then, you know, pretty much they
24 were determined they wouldn't be moving water from one
25 reservoir to a downstream one for a water shortage, that

Marv Swanda -- direct

30

1 they would pretty much stand alone at that -- you know,
2 once they got on further down the road.

3 Q And that's after the DPRs are completed?

4 A That's correct. And I think it's documented in
5 the DPRs.

6 Q Okay. Are the DPRs ever amended or revised?

7 A No, those were the original and final plans, I
8 mean, there were different versions, but there was --
9 they're the planning documents for the federal projects.

10 Q And let's talk just for a moment if we can
11 about your knowledge of the hydrology of the Republican
12 River Basin.

13 A All right.

14 Q Were you here when I asked Mr. Thompson about,
15 generally, what comprised the water components of the
16 Republican River?

17 A Uh-huh.

18 Q Do you know the answer to that question?

19 A I don't know that I could give a numerical
20 answer. I believe originally there's a significant
21 portion -- was base flows that were related to
22 groundwater.

23 Q And when you say originally, do you mean pre-
24 development time?

25 A Yes, pre-development, and early on until

Marv Swanda -- direct

31

1 probably into the '60s in looking at our flows, inflows
2 to our reservoirs and other stream flow data. They
3 pretty much matched up with the planning documents as to
4 what was expected, and I think certainly there are
5 some -- there are runoff components, probably more so
6 from the south side of the Republican River, that kind of
7 thing, but I think they all had base flows that supported
8 the stream flow.

9 Q You don't know which is -- was or is more
10 predominant?

11 A I would say ground- -- the base flows related
12 to groundwater were a significant portion of the stream
13 flows.

14 Q Were? Prior to 1960?

15 A Yes.

16 Q And you don't believe they are any longer?

17 A No, I don't.

18 Q So if I understand what you are saying, the
19 river went from being a base flow dominated system to
20 now, a surface flow dominated system?

21 A Yes to a runoff event kind of thing.

22 Q Runoff dominated.

23 A And it's certainly more pronounced to the west,
24 the upper basin, more so than the lower, I guess.

25 Q Closer to the Colorado border; is that what you

Marv Swanda -- direct

32

1 are saying?

2 A Yes. I would say from the McCook area to the
3 west.

4 Q Okay. And so now the system is predominately
5 fed by runoff. I'm going to hand you a document that I
6 located on the Bureau website.

7 THE REPORTER: What was the name of the
8 website?

9 MR WILMOTH: The Bureau website. I'm sorry, if
10 you look at the bottom of the website -- I'm sorry, if
11 you look at the bottom of this exhibit, you will see a
12 website number.

13 THE REPORTER: Thank you.

14 (Exhibit No. 12 was marked for identification.
15 See Index.)

16 Q (By Mr. Wilmoth) Are you -- If you could,
17 please, just take a moment and familiarize yourself with
18 this document.

19 A (Witness examining document)

20 Q Just let me know when you've had a minute.

21 A Yeah.

22 Q Generally speaking, do you know what this is,
23 or what this represents? Can you elaborate?

24 A I think in the final settlement stipulations
25 there was a -- during those discussions there was a lot

Marv Swanda -- direct

33

1 of discussions back and forth. The United States was
2 certainly interested in knowing the effects of
3 conservation activities throughout the basin as far as
4 consumptive use related to the activities. And what I
5 believe came out of that was, there was an agreement by
6 the three states, and the United States, to fund a study
7 to look at the effects of land terracing in small ponds
8 throughout the Basin related to consumptive use of water
9 and the runoff effects of that.

10 Q And is this summary generally represent that
11 study or some effort towards that study?

12 A I believe so. It's in the -- I think this is
13 the final year of that study coming up is the five-year
14 study.

15 Q And I don't know if you were present, but I
16 believe that I asked Mr. Thompson whether he knew of any
17 preliminary findings of that effort, and I believe he did
18 not. If you would look at the first two sentences of the
19 narrative below the bulb it indicates that there are
20 about 1.7 million acres of terraced fields, and that
21 these projects may be depleting the national water supply
22 of the basin by 175,000 acre feet a year, or nearly 50
23 percent of the historic flow measured at the Republican
24 River near Hardy.

25 Do you have any reason to doubt those numbers?

Marv Swanda -- direct

34

1 A I would say the study is not complete yet. I
2 couldn't speak to it, you know I was -- I've been
3 involved in listening to some of the updates on the
4 study, particularly last year by Jim Koelliker from the
5 State of Kansas and Derrel Martin, and so I couldn't
6 answer one way or the other.

7 Q You are not participating in that study?

8 A No, I've been involved just from again, on the
9 periphery of this study and not directly involved in it.

10 Q Has anyone in your office been involved in
11 that?

12 A Kind of -- somewhat, one or two on my staff,
13 but not directly involved in that. I think it's being
14 conducted pretty much by the states. The United States
15 is supplying funding to assist with that.

16 Q The United States meaning the Bureau of
17 Reclamation?

18 A Yes.

19 Q How about the Natural Resource Conservation
20 Service, NRCS?

21 A They were involved early on. I don't know how
22 much involvement they had currently, or -- I know there
23 was involvement by the NRCS early on, but not so much, I
24 don't think as the study progressed.

25 Q Is it your understanding that the NRCS was in

Marv Swanda -- direct

35

1 fact at one time quite a proponent of these conservation
2 measures?

3 A Yes, I'm aware of that.

4 Q So aside from these being preliminary numbers,
5 you have no reason to doubt their authenticity?

6 A I have no reason to doubt or approve them,
7 either one.

8 Q That's fair.

9 MR. WILMOTH: Question?

10 MR. DRAPER: I just -- repetitive questioning,
11 but I think he took care of it.

12 Q (By Mr. Wilmoth) I asked Mr. Thompson, and I'd
13 like to ask you about your personal involvement with the
14 RRCA?

15 A Okay.

16 Q Do you have any personal involvement? Have you
17 participated in the RRCA meetings?

18 A Yes, I have since probably 1995 when I became
19 the Water Operations Chief, and since then every year.
20 Certainly participate in the annual meetings in most of
21 the other public-type meetings, I many involve around
22 those -- or be involved with those. I usually provide a
23 presentation at the annual meeting.

24 Q And what does that presentation involve?

25 A It involves all of our information and data

Marv Swanda -- direct

36

1 related to our reservoirs and our project operations,
2 that kind of thing.

3 Q These are not the January projections though,
4 are they?

5 A No, it will involve things like that, but it
6 will speak to the previous years, water supply numbers
7 and delivery numbers, and all that kind of thing.
8 Anything pretty much related to water.

9 In the Republican Basin we try to capture in a
10 presentation at the annual meeting.

11 Q And the annual meeting is usually is like
12 summer, or --

13 A It used to be in June of every year, but of
14 late, it's in August, I believe. And I also participate
15 in -- usually there's a meeting prior -- a technical
16 meeting I think they refer to it, a working session prior
17 to that. I think I've attended most all of those.

18 Q And are these the engineering committee
19 meetings; is that what you are referring to?

20 A I believe that's probably correct.

21 Q And do you present data or interact with those
22 individuals?

23 A Yes, we have when it involves -- we may be on
24 the agenda for whatever reason to provide information to
25 the business folks.

Marv Swanda -- direct

37

1 Q Information related to the water supplies in
2 the basin or --

3 A Yes.

4 Q -- to the projects?

5 A Projects, yes.

6 Q But you don't provide any information outside
7 the context of those issues, water supplies for Bureau
8 projects?

9 A Yes, we provide all of our annual data related
10 to all of our projects. There's -- you know, we keep
11 quite a list of records, official water records,
12 deliveries, reservoir elevations, you name it. That's
13 all provided to the Compact states, and then it's -- a
14 lot of it's in conjunction with what we feel is required
15 of us by the states on keeping water records, that kind
16 of thing.

17 Q Are you involved at all in the Compact
18 accounting process?

19 A No, other than providing the data needed for
20 some of the reservoir -- or Bureau projects.

21 Q Are you familiar at all with the Compact
22 accounting procedures? Do you know what I mean when I
23 refer to that?

24 A Yes.

25 Q Yes, you're familiar with it?

Marv Swanda -- direct

38

1 A Yes. Not deeply familiar with it, but I --

2 Q One of the things that Mr. Thompson mentioned
3 was that one of the things the Bureau projects do is they
4 have an influence on the hydrology of the system. I
5 assume you would agree with that?

6 A Yes.

7 Q Generally? One of those influences is
8 evaporative losses?

9 A Yes.

10 Q Do you have any idea the scale of those losses?

11 A I would say it depends on the year, it depends
12 on --

13 Q How about in an average year?

14 A For example, I would -- the number that I think
15 I'm pretty familiar with is Harlan County. If it was a
16 full reservoir in a normal year, you'll see somewhere in
17 the neighborhood of 40,000 acre feet of gross -- or
18 evaporation at that particular lake, depending on, you
19 know, and the other reservoirs. It's all dependent on
20 how much surface area you have, how much evap, but each
21 one -- we certainly keep records.

22 We have visual weather stations in all of them.
23 We accumulate the data and compute the evap.

24 Q And is that evaporation date supplied to the
25 RRCA?

Marv Swanda -- direct

39

1 A Yes.

2 Q To the engineering committee?

3 A Yes.

4 Q For all of the facilities?

5 A Yes.

6 Q Okay, in total?

7 A Yes.

8 Q Do you have any idea, ballpark percentages, how
9 that evaporation loss relates to the total water supply
10 in the basin? Is it ten percent, twenty percent?

11 A I --

12 Q In an average year.

13 A I would guess it's -- I would say ten percent,
14 but that's just a guess without actually looking at it.

15 Q And how is that accounted for in the accounting
16 procedures?

17 A I believe it's in there -- I believe it adds on
18 to the virgin water supply, I believe that amount, and
19 then it's allocated out to each particular state
20 depending on how the accounting procedures define it, I
21 think.

22 Q And Mr. Thompson indicated that he had had no
23 prior dealings with the State of Kansas in regard to this
24 matter; is that true of you also?

25 A That's correct.

Marv Swanda -- direct

40

1 Q And when were you first approached about
2 appearing as a witness in this matter?

3 A I think the first that I became aware of it was
4 probably mid-to-late January maybe, not exactly sure,
5 but --

6 Q And what information did you review to prepare
7 for this proceeding?

8 A I reviewed, of course all of the information --
9 pretty much all of the information that was supplied in
10 the Touhy request. I reviewed some of the DPR documents.

11 Q Did you review any of the materials that were
12 submitted to the arbitrator in this proceeding?

13 A Very cursory, at best.

14 Q By that, I really mean the expert reports, not
15 all the legal mumbo-jumbo.

16 A Yeah. Not even so much those. I just didn't
17 have time.

18 Q So I infer, then, that you have no opinion
19 about the -- those reports?

20 A No.

21 Q One quick clean-up matter on Frenchman Valley.

22 A Yes.

23 Q I had asked Mr. Thompson if he knew
24 approximately what was remaining on the repayment
25 obligation for Frenchman Valley. Do you know the answer

Marv Swanda -- direct

41

1 to that question?

2 A The capital repayment?

3 Q Yes. And just for the record, could you
4 identify what you are referring to there?

5 A These are my personal notes. I don't think
6 that I have that with me.

7 Q Mr. Thompson, I thought, explained that
8 probably more than half had been paid off. Do you think
9 that's in the ballpark?

10 A That's probably -- I would think that --

11 Q What about the Bostwick division?

12 A I think that's probably -- which we submitted
13 is part of this -- in the contracts that are in these
14 documents.

15 Q The remaining balance?

16 A Yes, it's in the -- it lays out the payments.
17 Now there was some restructuring of the capital
18 repayments, I think, that would not be in there, but the
19 total amounts probably, I'm thinking is captured in the
20 contract for whichever particular irrigation district.

21 Q Were you in this office when Nebraska purchased
22 -- I'm sorry, when the Republican River Coalition
23 purchased water rights and had them sent down the system?

24 A Yes.

25 Q For Compact compliance?

Marv Swanda -- direct

42

1 A Yes.

2 Q And that occurred in 2007; is that correct?

3 A Okay, which one, there's three.

4 Q Sorry. Let's talk about 2007.

5 A Okay.

6 Q And I'd like to just provide you with a
7 document that was in the Touhy request response -- it
8 begins with Bates No. 342. If you could just have a peek
9 at that?

10 This will be Exhibit No. 13.

11 (Exhibit No. 13 was marked for identification.
12 See Index.)

13 Do you recognize this document?

14 A Yes.

15 Q (By Mr. Wilmoth) Could you explain, generally,
16 what this document is?

17 A I believe it was the Nebraska Department of
18 Natural Resources documenting how the accounting of those
19 water agreements, how those would occur in 2007.

20 Q And to the best of your knowledge, was this
21 transfer effectuated?

22 A Say that again, please?

23 Q Was this purchase and transfer down the system
24 effectuated?

25 A Yes.

Marv Swanda -- direct

43

1 Q And were there any problems with that that you
2 want to articulate for us today?

3 A I don't think there was. We worked closely
4 with DNR at the time with helping, you know, because we
5 were part of the making the accounting happen and
6 providing that kind of data to DNR, so --

7 (Exhibit No. 14 was marked for identification.
8 See Index.)

9 Q Sure. And then I'd like to provide you with
10 Exhibit 14. This too is from the Touhy request. If you
11 could just identify this document very briefly? And I'm
12 sorry, I should say not the electronic communication, but
13 the attachment is what I'm most interested in.

14 A Oh, okay. It was an order from the Department
15 of Natural Resources that we, the United States, could
16 store all the inflow in Harlan County except the
17 protected Frenchman Valley and the Riverside purchased
18 water.

19 Q And to your knowledge, did that occur?

20 A I believe that was pretty much how it happened,
21 yes.

22 Q Thank you. And then finally, I will give you
23 Exhibit --

24 (Exhibit No. 15 was marked for identification.
25 See Index.)

Marv Swanda -- direct

44

1 THE REPORTER: Fifteen.

2 Fifteen, which I believe is an electronic
3 communication which you received from Mr. Peck?

4 A Yes.

5 Q Could you identify this document for me please?

6 A It's from William Peck who is the -- now the
7 supervisor of water operations group who works under me,
8 and he was documenting the Harlan County estimated
9 purchase of water on August 10, 2007.

10 Q Right, and if I look down here, I see three
11 different -- three numbered statements. The first one is
12 not necessarily Harlan County water, is it?

13 A The first one is FV, that is Frenchman Valley
14 water, and Riverside is Riverside Irrigation District,
15 and it's those agreements with those two districts.

16 Q And the second one was Frenchman Cambridge?

17 A Yes, that's the water that was reassigned from
18 the Frenchman Cambridge Irrigation District to the Kansas
19 Bostwick Irrigation District. The initial amount was
20 26,000 acre feet. I believe the 14,000 represents the
21 consumptive use portion of that.

22 Q And third, is that the Bostwick water?

23 A That's correct. Nebraska Bostwick Irrigation
24 District's water.

25 Q Very good.

Marv Swanda -- direct

45

1 A Out of Harlan County.

2 Q And so how much water was sent through the
3 system this way for the benefit of Compact compliance, I
4 should say?

5 A This -- Okay, I think, first, I would say what
6 you have here is -- it was not a final accounting.

7 Q Okay.

8 A It was an estimate at the time.

9 Q Sure.

10 A And I would reply that I don't think that it
11 was our responsibility to account for Compact compliance,
12 that would be a question for the State of Nebraska, I
13 would think.

14 Q Okay, fair enough. How much water was
15 identified as being released?

16 A Going through just Frenchman Cambridge water?

17 Q Yes, well, just the total, if you would.

18 A Okay the total estimated release requested by
19 Kansas Bostwick was approximately 22,500. I think it
20 ended up being a lesser amount than that.

21 Q And there's a reference to carry over water by
22 Kansas Bostwick?

23 A Yes, what that was is if this water that was
24 assigned could not all be used up in that year, then
25 there was a provision to carry that over in Harlan

Marv Swanda -- direct

46

1 County.

2 Q And that would be retained for the sole benefit
3 of Kansas Bostwick, is that right?

4 A That is correct.

5 Q So that would not be re-split?

6 A No, that amount would not. The only caveat was
7 that is if the reservoir refilled the following year,
8 this amount could go away, and in fact, it did.

9 Q And what does the next statement mean; "Kansas
10 Bostwick also benefitted from at least 5,000 acre feet of
11 natural flow."

12 A Okay, that was related to -- in the agreement
13 with Nebraska Bostwick, they also allowed the natural
14 flow that was estimated to be available for Superior
15 Canal. And typically we would estimate there's 5,000
16 acre feet available for that, so they gave up that right
17 to that water so that could be taken on to Kansas
18 Bostwick.

19 Q And if you could just look at the final note,
20 an additional 10,000 acre feet. Do you see that
21 statement?

22 A Yes.

23 Q What does that mean?

24 A Okay, that would represent -- In my mind, that
25 represents the difference between the 26,000, which was

Marv Swanda -- direct

47

1 the number used for the purchase or transfer. That's the
2 difference between that and the consumptive use portion
3 that was protected. And, in addition, I would add that
4 there could have been some other natural flows pick up
5 that could have been in that number also, but it would
6 appear that as best as that water was accounted for and
7 tracked that year, we were thinking it was in the 10,000
8 acre foot area.

9 Q And that's natural flow?

10 A That was -- yes, that was inflow to the
11 reservoir as a result of the release from Harry Strunk.

12 Q I infer from your earlier comments though that
13 that was not an intentional release?

14 A No, that was part of the 26,000 related to the
15 difference between the consumptive use and the rest of
16 the water.

17 Q I have what we'll mark as Exhibit 16.

18 (Exhibit No. 16 was marked for identification.
19 See Index.)

20 Again, derived from the Touhy request response.
21 Would you just take a look at this document. I intended
22 to ask Mr. Thompson about this but then I realized that
23 perhaps it predated his arrival, and I also noted that it
24 had your name on it at the end as a cc, so you drew the
25 short straw.

Marv Swanda -- direct

48

1 A It's not the first time.

2 (Laughter)

3 MR. CHAFFIN: For the record?

4 THE REPORTER: Yeah.

5 Q (By Mr. Wilmoth) I would -- Well, let me ask.
6 Do you recall this document?

7 A I believe I do.

8 Q Did you participate at all in the creation of
9 this document?

10 A I would suspect I probably did.

11 Q And I would direct your attention to the last
12 page. There's a heading called Reclamations Role -- Pos-
13 -- I'm sorry. Strike that, I'm just getting tired --
14 "Reclamations Position/Role." Could you read those eight
15 points briefly, and my question to you is whether or not
16 Reclamation's position or role has changed substantially
17 since those statements were made.

18 A I think I can read them. The question, if I
19 can comment on them or not.

20 (Conferring with Counsel off the Record)

21 Q Oh, I -- maybe let me clarify. I'm not asking
22 into the future, I'm asking as we sit here today, is
23 there any reason to believe --

24 A I don't think it makes a difference.

25 Q Let me ask it this way. Let me try it again.

Marv Swanda -- direct

49

1 For the record, I'll understand that Mr. Swanda's been
2 instructed not to respond to that particular question due
3 to the prior limitation; however, I will try to rephrase
4 it. Was there any change in Reclamation's position
5 overall between 2006 and when this document was created,
6 and January 1 of 2009?

7 (Conferring with Counsel off the Record)

8 THE WITNESS: So, your first question to read
9 through these?

10 MR. WILMOTH: Take your time if you need to.
11 The fundamental question is whether this position and
12 role as articulated in this document dated 2-2006,
13 substantially changed between the date of this document
14 and January 1, 2009.

15 MR. DRAPER: Would this be a good time to take
16 a break?

17 MR. WILMOTH: That would be fine.

18 Off the record.

19 (Off the record from 2:44 p.m. to 2:58 p.m.)

20 Q (By Mr. Wilmoth) So, Mr. Swanda, back to it,
21 the question relates to these eight points.

22 A To my knowledge, this is still appropriate, I
23 guess.

24 Q Okay.

25 A The only one I might notice, number eight, I'm

Marv Swanda -- direct

50

1 not sure what that is, whatever LB that applies to.

2 Q All right, fair enough. So with regard to the
3 first one, fulfilling commitments under the Compact
4 Settlement Agreement, that doesn't relate to water
5 delivery requirements or anything like that; is that
6 right? It's just these three things listed underneath
7 there?

8 A I believe that's correct.

9 Q And that's essentially supporting studies and
10 other things?

11 A Yeah, I think it's -- Yeah, A would apply to
12 the conservation study that is ongoing with the five year
13 study.

14 Q And did I understand you to say that would be
15 complete sometime within the year?

16 A I believe it's to be completed in 2009.

17 Q Okay.

18 A B is a -- I believe that's related and this is
19 also in the FSS that we agreed to do a it's called a
20 Lower Republican Study for improvements, that kind of
21 thing; and C, I think that's related. That's a State
22 thing though, not United States necessarily.

23 Q Okay, so you're not involved in that directly?

24 A No, not directly, no.

25 Q And number two almost speaks for itself,

Marv Swanda -- direct

51

1 avoiding further Compact litigation. I infer from that
2 that you mean making sure the United States stays out of
3 litigation?

4 A I assume that's what that means.

5 Q And I don't blame you for that. I'm interested
6 in points three and four.

7 A Three, I believe if we -- as far as I know we
8 are willing to listen to discussion concerning how the
9 United States can help in this but it needs to be within
10 our authorities in our contract obligations, those kind
11 of things.

12 Q So, for example, if there's any activity that
13 one state suggests that adversely impacts the water
14 supply to a federal project, the Bureau would not be
15 supportive of that?

16 MR. CHAFFIN: Mr. Wilmoth, I really think this
17 line of questioning is something that Mr. Thompson would
18 be more than happy to be recalled and go into; the
19 philosophy behind each one of these parts. Mr. Swanda
20 really isn't in a position to answer those kinds of
21 things.

22 MR. WILMOTH: And that's fair enough, and
23 again, I -- as I mentioned I thought this predated Mr.
24 Thompson and perhaps it would be not fair game to ask him
25 questions about it, but I don't have a problem with doing

Marv Swanda -- direct

52

1 that. I can set this aside and maybe we can spend five
2 minutes on this.

3 MR. CHAFFIN: That might be in your better
4 interest.

5 Q (By Mr. Wilmoth) Mr. Swanda, you were here for
6 the testimony of Mr. Thompson when he talked about some
7 concerns with regard to Compact compliance by the State
8 of Nebraska; were you not?

9 A Yes.

10 Q And did you assist Mr. Swanda -- or Mr.
11 Thompson in formulating any opinions on that matter?

12 A You're talking about the agreements in 2006?

13 Q No. I'm sorry, I'm talking about the
14 likelihood that the State of Nebraska will comply with
15 the Compact into the future?

16 A Oh, I probably would have been a part of
17 discussions with him in regards to that.

18 Q In that regard, have you reviewed any of the
19 Integrated Management Plans in detail?

20 A Yes, I have.

21 Q And how do you understand those plans to
22 function?

23 A I understand them to be a joint plan with the
24 particular NRD, depending on the area you're talking
25 about, and the Nebraska Department of Natural Resources,

Marv Swanda -- direct

53

1 dealing with the interaction of groundwater and surface
2 water. Some of the main goals is to assure a balance of
3 the water use; sustainability; ensuring that there's
4 equal treatment, be it surface water or groundwater user,
5 that kind of thing.

6 Q Do you agree with Mr. Thompson's assessment
7 that the IMPs will not adequately keep Nebraska in
8 compliance?

9 A I believe it will be very difficult with the
10 allocations that are currently in those IMPs to ensure
11 long term compliance with the Compact.

12 Q And Mr. Thompson indicated that he relied
13 principally on information supplied by the Department of
14 Natural Resources from Nebraska to draw that conclusion.
15 Did you do the same?

16 A Yes, there would have been -- we would have
17 reviewed that kind of data probably along with the output
18 data from the groundwater model, Compact groundwater
19 model, those kinds of things.

20 Q Are these model runs that you conducted or that
21 the RRCA conducted?

22 A No, the RRCA.

23 Q Okay, so you performed no independent analysis
24 of the effectiveness of the IMPs?

25 A That's correct. We just looked at the

Marv Swanda -- direct

54

1 available information from those sources.

2 Q And do you have an opinion on the level of
3 groundwater reduction that would be required to maintain
4 Compact compliance?

5 A I could not sit here and probably give you a
6 number. I would say that it needs to be a significant
7 reduction from what's currently in there for their
8 allocations. I can't tell you that it's five inches or
9 seven inches. There's enough factors involved in the
10 NRDs, the areas are enough different, but from what we've
11 reviewed, we feel that it has to be significantly smaller
12 allocations than that that are currently in there to
13 ensure that we have water available in our projects for
14 those projects to operate, in that they assist with
15 Nebraska meeting Compact compliances by operating our
16 projects. And in order to do that, we don't think the
17 current allocations will allow for those surface waters
18 to be available.

19 Q And in order to do that, are you suggesting
20 that the base flow needs to be restored to some level?

21 A Yes, I believe that's correct.

22 Q And in order to do that, do you suggest that
23 the groundwater levels need to recover to some level?

24 A I believe that's a direct correlation to the
25 groundwater levels and the surface water that will

Marv Swanda -- direct

55

1 appear, base flows that will maybe appear if there is a
2 connection with groundwater levels and the stream bed,
3 that kind of thing.

4 Q Uh-huh, but you don't understand the Compact to
5 require anything about groundwater levels either, do you?

6 A I understand that they will account for any
7 depletions caused by groundwater will be in the Compact
8 accounting in the accounting method to account for those
9 depletions, stream flow depletions.

10 Q But do you understand the Compact to be a
11 surface water Compact, principally?

12 MR. DRAPER: Are you asking him a -- the legal
13 question that was at the core of the suit as to whether
14 groundwater impacting surface flows needs to be
15 considered?

16 MR. WILMOTH: No, no, no. What I'm asking is,
17 when he's suggesting that the IMPs won't achieve Compact
18 compliance, does he believe that Compact compliance has
19 any groundwater component, or is it a surface water
20 compliance test.

21 A I don't think that's the question that I can
22 answer.

23 Q (By Mr. Wilmoth) Because you don't know the
24 answer, or because I didn't ask it well? I'll accept
25 either one.

Marv Swanda -- direct

56

1 My question is, are there any tests that you're
2 aware of under the Compact that speak to groundwater
3 specifically, or is it simply a measurement of surface
4 flow at certain gages or locations?

5 MR. DRAPER: Are you asking him separate from
6 the FSS, which has --

7 MR. WILMOTH: I'm just asking him his
8 understanding whatever it's based on. It's not a legal
9 question. I'm just saying when he's talking about an
10 opinion that the IMPs cannot achieve Compact compliance,
11 how does he define Compact compliance? What's his
12 understanding? He may be legally correct or incorrect, I
13 don't care.

14 A I believe there's surface water Compact
15 stations that are indicated in the Compact. I believe
16 the surface water is accounted for in the current
17 accounting process and procedures.

18 Q So to borrow a phrase from my colleague, Mr.
19 Ampe, is that another way to -- a short way to say that
20 it's a surface water Compact, in your understanding?

21 A I would say, yes.

22 Q Okay, thank you.

23 Did I get that right, Pete?

24 MR. AMPE: (Gesturing)

25 Q (By Mr. Wilmoth) And you'd mentioned earlier,

Marv Swanda -- direct

57

1 and I believe Mr. Thompson mentioned earlier that there
2 were multiple factors contributing to the decline in
3 surface flows into the projects?

4 A Yes.

5 Q And some of those things might include
6 groundwater pumping; some of them may be conservation,
7 but for -- conservation measures, but for clarity of the
8 record, you don't know the relative responsibilities of
9 those two factors or any other factors?

10 A No, I would say with -- in my opinion
11 groundwater's a large share of it, but there's also other
12 impacts from conservation practices, that kind of thing.

13 MR. WILMOTH: If I can just take two minutes to
14 confer with these guys, I think we might be done.

15 It may be anti-climatic, but we have nothing
16 further for this witness. I would like to spend five
17 minutes with Mr. Thompson again if that's all right with
18 you, Mr. Chaffin, regarding this particular document.

19 MR. DRAPER: And we need to think first about
20 Colorado and Kansas for any further --

21 MR. WILMOTH: Oh, I'm sorry, it's my mistake

22 MR. AMPE: I don't have any questions.

23 MR. DRAPER: Okay, well, I'd like to take --
24 yeah, why don't we take a break and I'll see what I have
25 for Mr. Swanda.

Marv Swanda -- cross

58

1 (Off the record from 3:12 p.m. to 3:19 p.m.)

2 MR. DRAPER: Okay, if we could go on the
3 record. I have a question.

4 CROSS EXAMINATION

5 BY MR. DRAPER:

6 Q Mr. Swanda, good afternoon. You were asked by
7 Mr. Wilmoth about the contracting for surface water
8 supplies in 2005, 2006 and 2007. Was the State of Kansas
9 involved and asked to participate in any of those
10 discussions or transactions?

11 A I don't believe they were directly, or
12 indirectly, probably. You're talking the 2006
13 agreements?

14 Q Yes.

15 A No, I don't believe -- I think there was some
16 discussion after the fact kind of thing.

17 MR. DRAPER: I don't have any other questions.
18 Thank you very much.

19 MR. WILMOTH: Do you wish to read and sign?
20 Were you here when we talked about that with Mr.
21 Thompson? I assume you would like to handle that the
22 same way, the read and sign if you would just indicate
23 you would like to read and sign.

24 THE WITNESS: I would like to read and sign.

25 THE REPORTER: Thank you.

Marv Swanda -- cross

59

1 (Concluded at 3:21 p.m. on April 7, 2009)

2 - - -

60

____ CERTIFICATE OF WITNESS

DEPOSITION OF MARV SWANDA

Taken April 7, 2009

I certify that I have read my deposition
referenced above and that discrepancies, if any, are
listed by page and line numbers as follows:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION AND/OR REMARKS</u>
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Signature of Witness

Subscribed and sworn to before me this _____
day of April, 2009.

Notary Public